

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFF JAY HANCOCK,

Petitioner,

V.

JOHN MARSHALL, Warden,

Respondent .

Petitioner, a state prisoner, filed the present petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He states that his state habeas petitions are still pending before the California Supreme Court.

The California Supreme Court's official website shows that Petitioner's state habeas petitions were filed on March 12, 2007 and April 19, 2007, and that there has not been any final decision from the California Supreme Court. See Hancock (Jeff) on H.C., Cal. S. Ct. No. S150880; Hancock (Jeff) on H.C., Cal. S. Ct. No. S151947.

The exhaustion requirement applicable to federal habeas petitions is not satisfied if there is a pending post-conviction

1 proceeding in state court. See 28 U.S.C. § 2254(b)-(c); Sherwood
2 v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-
3 conviction challenge to a criminal conviction is pending in state
4 court, a potential federal habeas petitioner must await the outcome
5 of the challenge before his state remedies are considered
6 exhausted. See id. Moreover, the rule in Sherwood applies whether
7 or not the issue raised in the pending state petition is included
8 in the federal petition, see id., for the reason that a pending
9 state court challenge may result in the reversal of the
10 petitioner's conviction, thereby mootng the federal petition. See
11 id. (citations omitted).

12 As Petitioner has two petitions currently pending in the
13 California Supreme Court, the instant petition for a writ of habeas
14 corpus is DISMISSED without prejudice to refiling once all state
15 court post-conviction challenges to Petitioner's conviction have
16 been completed, and all claims Petitioner wishes to raise in
17 federal court have been presented to the Supreme Court of
18 California. See 28 U.S.C. § 2254(b)-(c); Rose v. Lundy, 455 U.S.
19 509, 522 (1982) (holding every claim raised in federal habeas
20 petition must be exhausted).

21 The Clerk of the Court shall enter judgment and close the
22 file. No filing fee is due.

23 IT IS SO ORDERED.

24 Dated: 5/24/07



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JEFF JAY HANCOCK,

Plaintiff,

v.

JOHN MARSHALL et al,

Defendant.

Case Number: CV07-02644 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 24, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jeff Jay Hancock V-49474
California Men's Colony
P.O. Box 8101-5194
San Luis Obispo, CA 93409

Dated: May 24, 2007

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk